

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY K. HEBBLETHWAITE

Claimant

VS.

LADY BALTIMORE FOODS, INC.

Respondent

AND

ALTERNATE RISK SERVICES

Insurance Carrier

Docket No. 248,205

ORDER

Claimant appeals Administrative Law Judge (ALJ) Steven J. Howard's August 23, 2002, Award. The Appeals Board (Board) heard oral argument on February 11, 2003.

APPEARANCES

James R. Shetlar of Overland Park, Kansas, appeared for the claimant. Kip A. Kubin of Kansas City, Missouri, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and has adopted the stipulations listed in the Award. In addition to the record stated in the Award, the record includes the court-appointed medical evaluation reports of Edward J. Prostic, M.D, dated October 23, 2000, December 11, 2000, and February 9, 2001. Also, the record includes the parties' Stipulation filed July 18, 2002, which includes claimant's payroll records while employed by Butler R.V. School District from November 11, 1999, through January 18, 2001. The

Award also lists a deposition of Michael Downs which is incorrect and should be listed as the deposition of Daniel M. Downs, M.D.

ISSUES

This is a claim for bilateral knee injuries and a subsequent low back injury caused by an altered gait that claimant suffered while working for respondent on September 29, 1998. The ALJ awarded claimant a 14 percent permanent partial general disability based on permanent functional impairment.

Claimant appeals and argues he proved he is entitled to a 63.5 percent permanent partial general disability based on a work disability. Conversely, respondent requests the Board to affirm the Award. Respondent argues that claimant was offered a post-injury job within his work restrictions at his pre-injury average weekly wage, and claimant refused to even attempt the job. Consequently, respondent argues claimant is not entitled to a work disability award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Award should be affirmed. The Board agrees with the ALJ's analysis of the evidence as set forth in the Award. The Board, therefore, adopts the findings and conclusions contained in the Award as if specifically set forth in this Order. In particular, the Board finds the testimony of Elbert L. Eagan, respondent's safety director, and the testimony of Martin Wells, respondent's operation manager, are persuasive and support the conclusion that respondent offered claimant a post-injury job which paid claimant the same wages he was earning before his accident within the restrictions imposed by claimant's treating physician, orthopedic surgeon Dr. Daniel M. Downs. Claimant refused to even attempt the offered job because he did not possess the computer skills to perform the job. But both Mr. Eagan and Mr. Wells testified that claimant was advised respondent would provide training for claimant to develop the necessary computer skills to perform the job.

The Board is mindful that claimant testified he did not remember the respondent making such a job offer. But the Board finds the credibility of both Mr. Eagan and Mr. Wells is supported by the fact that neither Mr. Eagan or Mr. Wells were employed by the respondent at the time they testified. Both had been long-time employees of respondent, but Mr. Eagan had voluntarily left respondent's employment, and Mr. Wells had been requested to leave by respondent's new management.

Accordingly, because claimant failed to even attempt the job respondent offered, the wage claimant could have earned is imputed to claimant. As this imputed wage is

equivalent to his pre-injury average weekly wage, claimant is disqualified from a work disability and limited to a permanent partial general disability award based on his percent of permanent functional impairment.¹

AWARD

WHEREFORE, it is the finding, decision and order of the Board that ALJ Steven J. Howard's August 23, 2002, Award should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: James R. Shetlar, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Division of Workers Compensation

¹ See K.S.A. 1998 Supp. 44-510e(a); *Foult v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied*, 257 Kan. 1091 (1995).